It was also argued that the writ of certiorari is a high prerogative right of the Crown and is not affected by any limits of jurisdiction laid down by law.

I have come, after consideration, to the conclusion that the analogy made by counsel is not accurate. The Public Authorities Protection Act, while it limits for good reason the rights of action against judicial and other officers of the State does not entirely abrogate them. It allows action limited to a time which is fixed and ascertained by the date of the acts complained of, but such acts always have been and continue to be of such a nature that they can be called into question. The provisions of Ordinance 1 of 1946 as they now stand abrogate the right completely. There is no time during which actions done during the war period can be called into question, and when a date is fixed for the inclusion thereof, these actions become a body of actions against which there never has been and never will be a remedy, and so become sui generis. The wording of the definition of legal proceedings seems to me to be much stronger that those of the Act, and seems to me to have been meant to and to have actually precluded resource to any legal proceedings whatever. In my opinion, action by writ of certiorari is a legal proceeding and is, in view of sec. 2 and 3 of the Ordinance, not open to the applicant, nor can I hold that the inherent nature of proceedings by certiorari are superior to a direct prohibition laid down by a statute.

In my view, the applicant is still not left without a remedy· he may approach the Attorney-General under the provisions of sec. 3 (ii) of Ordinance 1 of 1946, either alleging bad faith on the part of the Asst. Food Controller and asking for an inquiry or permission to take proceedings, or he may petition the head of the Civil Administration for inquiry and remedy.

That there was need of the provisions of Ordinance 1 of 1946, as there always is, after the cessation of a war in which acts not strictly in accordance with the law are done for the public good, is extremely probable, but, in my view, the Govt. of the Malayan Union should consider whether the time is not now ripe to limit the protection given by sec. 3 of this Ordinance by fixing a date of expiry for the war period defined in sec. 2 of the Ordinance.

For the above reasons, namely, lack of jurisdiction by the Court and the absolute protection, as I conceive it to be, afforded by section 3 of Ordinance 1 of 1946 to the Asst. Food Controller, I must reject this application and make no order on the motion.

Application Rejected.

P. P. v. LIM TEONG SENG AND 2 OTHERS.

[Orig. Criminal Jurisdiction (Laville, J.) July 25, 1946]

F. M. S. Criminal Procedure Code S. 180 — Criminal trial before a Judge sitting alone — Submission of no case to meet.

In this case the accused were charged with housebreaking before a Judge sitting alone. At the end of the case for the prosecution Counsel for the accused submitted that no case had been made out against the accused which if unrebutted would warrant a conviction and that therefore the Court was bound to record an order of acquittal. The learned Crown Counsel submitted that if there was any reasonable evidence offered by the prosecution the Court ought to hear the defence.

Held, (1) that the sections that cover procedure at the end of the prosecution evidence in the Magistrate's Court, in the Court of a Judge sitting alone and in the Court of a Judge sitting with assessors are substantially the same; and (2) that if at the close of the prosecution the Court was of opinion that on the evidence it could not, as a jury, hold the allegations proved beyond all reasonable doubt, there was nothing left for it to do but to acquit the accused.

Case referred to —

P. P., Johore v. Fong Ah Tong and another (1940) 9 M.L.J. 240.

John Laycock for accused No. 2 submitted :—

The language of S. 180 of the Criminal Procedure Code is word for word the same as the language of S. 190. The same construction must be given to both sections. In the case of the **Public Prosecutor Johore v. Fong Ah Tong and another**, 9 M.L.J. 240, the question at issue was the construction to be placed on S. 190 and the Court held that under that section the criterion at the close of the prosecution's evidence is, Has the prosecution proved its case beyond a reasonable doubt? If not, the accused should not be called on to enter on his defence.

This was a decision on S. 190 not on S. 180 but the language of both sections is identical and since the decision of this case, it has been followed on numerous occasions, and its ratio decidendi is applicable in the present case. Certainly in this present case it cannot possibly be said that the prosecution has proved its case beyond a reasonable doubt and therefore the 2nd accused is entitled to an acquittal.

Braga for accused Nos. 1 and 3 adopted Laycock's argument.

Laville, J. — Mr. Laycock at the close of the prosecution case submits that no case has been made out against his client which if unrebutted would warrant a conviction, and that therefore the Court is bound to record an order of acquittal.

Mr. Braga, on behalf of his clients Nos. 1 and 3 accused, makes the same submission.

The learned Crown Counsel submits that if there is any reasonable evidence offered by prosecution the Court ought to hear the defence.

Learned counsel for No. 2 accused cites in support of his plea the case of *P. P., Johore vs. Fong Ah Tong and another*[1] where the Court held that section 190 of the Criminal Procedure Code imposed on a judge trying a case with the aid of assessors the duty of recording an order of acquittal if at the end of the prosecution the Court is of opinion that the prosecution have not made out its case beyond all reasonable doubt.

In that case I was the trial judge.

The wording of section 180, which is concerned with the procedure at the end of a prosecution before a judge sitting alone, is word for word the same as that of section 190, and cannot in my opinion been any other meaning than that I have already given to the wording of section 190.

I have considered the sections that cover procedure at the end of the prosecution evidence in the Magistrate's Court, in the Court of a Judge sitting alone, and also sitting with assessors, and in the Court of a Judge sitting with a jury. The relevant sections are respectively sec. 173 (f), sec. 180, sec. 190 and sec. 214 of the Criminal Procedure Code. The wording in the first 3 cited sections is the same; the meaning to be applied to it cannot be differentiated.

In my view, the basis of this direction in sec. 173 (f), sec. 180 and sec. 190 is twofold. Firstly, that the onus is on the prosecution and never shifts to prove its case. Secondly, that the circumstances of each of these 3 forms of trial are the same. The presiding officer is sitting not only as a judge but as a jury. If therefore at the close of the prosecution he as a jury comes to the conclusion, not that there is no evidence, but that the evidence produced is not strong enough to warrant a conviction, and only evidence beyond all reasonable doubt is of that nature, he is not by the spirit of English law entitled to say: "I am doubtful of this evidence but let us see if it can be supplemented and improved by what can be elicited from the defence." The prosecution who have to prove their case beyond all reasonable doubt have produced all the evidence they have, and it is on this evidence the conviction if any must rest, even if accused calls evidence. What the prosecution can elicit for its view from them is either supplementary or redundant, or goes to lessen the credibility of the defence evidence. It cannot be the basis of a conviction. If therefore at the close of the prosecution the Court is of opinion that on that evidence it cannot, as a jury, hold the allegations proved beyond all reasonable doubt, there is nothing left for it to do but to acquit the accused. This view point is set out by the sections cited above.

Even in a trial by jury where the judge is merely a director on the law, and the jury are judges of fact the rule as to acquittal at the end of the prosecution evidence is substantially the same. Section 214 sub-section (iii) of the Criminal Procedure Code lays down that the jury may return a verdict of not guilty ..... at any time after the conclusion of the evidence for the prosecution if they consider the case to be one in which they could not safely convict. Such a case is one where the jury are not convinced beyond all reasonable doubt on the prosecution evidence that the accused is, as far as the prosecution evidence goes, guilty of the offence charged.

In this case the facts proved by the prosecution are that on 23rd August 1945 the house of Mohammed Shariff was broken into by Chinese, that he himself was grievously hurt and that his wife Wok was also wounded by a spear. The evidence for this is that of Wok and her daughter Rogayah, and to some extent Kasidan and Ahmad bin Dikon.

It seems clear that the motive of this irruption into the house of Shariff was a political one; that the Chinese who broke in considered that Shariff and his wife had been more friendly with the Japanese invader than they considered proper and that they considered, now that the invader was about to depart, the time had come for them to display their disapproval of the conduct of Mohammed Shariff and his wife Wok. A sorry state of things on both sides is revealed, if the allegations of the defence and the prosecution are true; on the one side, a Malayan household fraternising with the invaders of its country presumably for its own personal advantage; on the other, foreign residents in the country lowering themselves to the level of the invading Japanese in savage behaviour by punishing illegally the aforesaid inhabitants for their tolerance of Japanese rule.

However that may be, the real point at issue in this case is whether the 3 accused men were part of the body of Chinese who entered Shariff's house. The only evidence as to their identity is that of Wok binte Talib, who asserts she was attacked and mishandled by them. All of them she says, and there seems no reason to doubt it, were known to her before. But against this identification are the following facts. It was not till sometime in December 1945, that is 3 months after the event that she named the 3 accused as guilty parties. She had ample opportunity to take the

natural course and state immediately after the assault that 3 of the men concerned were the accused known to her of old; she states that she did not do this because during those 3 months there was fear of the Chinese at Kluang among the Malays there. Even if that was so, the people to whom she went for refuge were Malayans, people of her own race, and one of them, a man having some official authority, the ketuah Kampong, and yet to neither of these 2 men, nor to her daughter did she reveal that she knew the 3 men who assaulted her by name; it is clear that on the night of the 23rd and on the 24th, though weak, she was conscious and could and did relate what had occurred and it is my view incredible that in doing so, she did not give the names of the accused who had injured her and her husband severely; it seems to me that as a reasonable man I must hold that the only reason for not doing so, was that she did not then recognise any of the attackers as the accused men she knew. Even if she was afraid of the Chinese I cannot see what she had to fear from confiding the names at once to Kasidan, Ahmad and her daughter, who were of her own race and presumably had as much to fear from the Chinese.

In view of these considerations, I am of the opinion that no case has been made out by the prosecution which if unrebutted would warrant a conviction and, as in duty bound, I must acquit all the accused on this charge.

Accused acquitted.